HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 638 of 2007

Between:

Janab Mir Wajid Ali Memorial Educational
Society, rep., by its Secretary, K.M. Minhajuddin,
S/o K.M. Arifuddin, aged 22 years, R/o. 103,
R.K.S. Apartments, Hyderguda, Hyderabad

... Appellant

And

Government of Andhra Pradesh,
Rep., by its Secretary, Higher Education,
Secretariat, Hyderabad and two others

... Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri Philkana Rama Rao

13th September, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 29-3-2006 passed by the learned Single Judge in Writ Petition No.3716 of 2003, whereby he declined to interfere with the action taken by Osmania University, Hyderabad (for short, 'the University') to penalize the appellant for having violated the policy framed by government in the matter of admission of non-minority candidates.

The appellant is a minority educational institution duly approved/recognised by the State Government, All India Council for Technical Education and University. Vide G.O.Ms.No.43, Higher Education (E.C), dated 1-7-2002, the State Government accorded approval to the appellant for conducting MCA course with intake of 60

students. Thereafter, the University informed the appellant that it shall strictly comply with the provisions contained in G.O.Ms.No.150, dated 11-8-2000, which postulates that after completing the process of selecting minority candidate, the minority institution should display the list of the successful candidates on the notice board of the college and also send a copy of the same to the competent authority, the Minority Welfare Department, Hyderabad. The unfilled seats are required to be filled as per the Rules in force for under-graduate professional and technical courses. Such seats have to be communicated to the Convenor, who is required to send the list of remaining eligible minority candidates. That list would constitute the basis for filling up the unfilled seats. After this process is over, unfilled seats can be filled by the management in accordance with Rule 4 (2) of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (for short 'the Act') and Andhra Pradesh Minority Educational Institutions (Establishment, Recognition and Regulation) Rules, 1988 (for short 'the Rules').

However, in complete disregard of the policy framed by the State Government, the appellant admitted 31 students of non-minority category. Not only this, it did not inform the competent authority about those admissions. On coming to know of this, the State Government issued Memo No.6962/M&R/A3/2002, dated 31-10-2002 to the appellant to explain its position in regard to the illegal admissions of non-minority candidates. The appellant represented to the University for approval of the admissions of non-minority candidates by stating that such admissions were made due to non-availability of the students of minority category. Initially, the University declined to approve the admissions of non-minority candidates on the ground that the same were made in violation of the instructions issued by the government, but, later on, it regularised the admissions of non-minority students by imposing penalty of Rs.5,000/- per candidate per year. This was communicated to the appellant vide letter dated 27-1-2003.

The appellant questioned the aforesaid decision of the University by describing it as arbitrary and unreasonable. In the affidavit filed by Sri K.M. Minhajuddin, Secretary of the appellant, it was averred that the Convenor had been duly informed about non-availability of the candidates of minority category and, only thereafter, the non-minority candidates were admitted on merit basis. It was further averred that the instructions contained in G.O.Ms.No.150, dated 11-8-2000 are applicable to under-graduate professional and technical courses and, therefore, the same could not be made applicable in respect of admissions to MCA course.

The learned Single Judge referred to the provisions contained in the Andhra Pradesh Minority Educational Institutions (Establishment, Recognition and Regulation) Rules, 1988, the All India Council for Technical Education (Norms and Guidelines for Fees and Guidelines for Admission in Professional Colleges) Regulations, 1994 and observed:

"The Government of Andhra Pradesh having regard to the approval of AICTE accorded permission to the petitioner – institution to commence MBA/MCA course from the academic year 2002-03 under Section 20 of A.P. Education Act, 1982 vide G.O.Ms.No.43, dated 1-7-2002. Thereupon, a memo No.7586/E.C.1/2002-1, dated 30-7-2002 came to be issued conferring the status of minority educational institution but the minority status came to be conferred with certain conditions. The foremost condition is that the petitioner – institution shall admit students belonging to minority community for which it is established and in case there are any unfilled seats the institution has to report the same to the Convenor (Admissions). In the above referred memo, a specific mention has been made with regard to G.O.Ms.No.526 Education, dated 21-12-1988 wherein A.P. Minority Educational Institution (Establishment, Recognition and Regulation) Rules, 1988 are published. As per Rule 11(13)(e) of A.P. Minority Educational Institution (Establishment, Recognition and Regulation) Rules, 1988, the minority institution shall admit students belonging to the concerned community from amongst the merit list of students prepared by the competent authority conducting the common entrance examination on the basis of ranking assigned in the entrance examination. For better appreciation, I may refer to the above referred rule and it is thus:

"(e) Where common entrance examination has been prescribed for admission into various educational institutions, the minority educational institutions,-

(i) shall admit students belonging to the concerned community from among the merit list of students prepared by the competent authority conducting the Common Entrance Examination, on the basis of the ranking assigned in the Entrance Examination;

(ii) may admit students belonging to other than the concerned community on the basis of the ranking allotted by the competent authority, in case there are no eligible candidates belonging to the concerned community for making admission. In such a case, the rule of reservation as prescribed by the Government from time to time shall be followed."

It is not in dispute that the petitioner – institution without surrendering the unfilled seats to the competent authority proceeded to admit the students belonging to non-minority community in the unfilled seats. Therefore, it can be said without any controversy that the action of the petitioner – institution is in breach of Rules referred to above."

The learned Single Judge further observed:

"With regard to the contention of the petitioner – institution that G.O.Ms.No.150 is not applicable to Post-Graduate course, I see no merit since the purport of the said G.O. is manifest that it covers technical courses and it is no more in dispute that MCA is a technical course and indeed the petitioner – institution obtained permission from the AICTE to commence MCA course."

While rejecting the appellant's challenge to the penalty imposed by the University, the learned Single Judge referred to Section 4 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 and held:

"……What is permitted u/s 4 of Act, 1983 is that where any minority educational institution intends to admit students not belonging to the concerned minority, such admission shall be only on the basis of marks obtained in the qualifying examination or on the basis of ranking assigned in the entrance test conducted in the prescribed manner. It does not mean that the petitioner – institution can violate the Rules framed by the Government in exercise of powers conferred by Sec.99 of A.P. Education Act (Act 1/82) which came to be published in G.O.Ms.No.526 Education, dated 21-12-1988. The procedure of admission into MCA course by the petitioner – institution has been well informed to the petitioner – institution even by the date of approval to the petitioner – institution to commence MCA course. It is evident from the relevant rules that seats remained unfilled as on the cut off date must be surrendered to the competent authority and when the competent authority has not allotted the candidates in the final phase of

counselling, then only the petitioner – institution can proceed with the filling of the unfilled seats with non-minority candidates. It is manifest from the correspondence between the petitioner – institution and the Government that the petitioner – institution proceeded to fill the seats with non-minority candidates even before the cut off date and last phase of the counselling. Under Sec.25 of the A.P. Universities Act, 1981, Standing Committee of Academic Senate is empowered to make Regulations for the admissions of students of the University. The University has got every right to give affiliation or to withdraw the affiliation in case of the petitioner – institution not confirming to the Rules and Regulations made with regard to the admission of students to any particular faculty/course. 3rd respondent – University after noticing irregularity in the admission of non-minority students by the petitioner – institution informed the petitioner – institution that admissions made by petitioner – institution are not in accordance with the instructions issued by the Government in their memo dated 30-7-2002 vide letter dated 16-12-2002. The petitioner institution submitted explanation. The Standing Committee of Academic Senate considered the explanation and thought it fit to impose penalty of Rs.5,000/- per candidate per year for each of the non-minority candidate admitted in lieu of non-minority candidate, keeping in view of the future of the students who had already been admitted. The decision of the Standing Committee of the Academic Senate was preceded by a report submitted by a Committee constituted to examine the matter. The contention of the learned counsel appearing for the petitioner – institution that before imposing penalty, the petitioner – institution was not put on notice and thereby violated the principles of natural justice has no substance in the facts and circumstances of the case."

Shri Philkhana Rama Rao, learned counsel for the appellant invited our attention to letters dated 23-9-2002 and 16-10-2002 sent by the Chairman, Maryum Institute of Computer Sciences and argued that the admissions of non-minority candidates in MCA course cannot be treated illegal because the appellant had duly informed the concerned authority about non-availability of the minority candidates. In the context of this submission, we repeatedly asked the learned counsel to explain as to why the appellant admitted non-minority candidates even before expiry of the last date for admission of minority students and why the list of minority students, who were admitted in the appellant institution up to the last date fixed for such admissions, had not been forwarded to the concerned authorities, but, he could not offer any

explanation. It is also interesting to note that even though vide letter dated 31-8-2002, Registrar of the University had made it clear to the management of the appellant that it must make admission of minority candidates strictly as per the guidelines issued by the State Government and any deviation will be viewed seriously, the latter proceeded to admit non-minority students even before expiry of the last date fixed for admissions. This is clearly evinced from the two communications, which are extracted below:

"OSMANIA UNIVERSITY
HYDERABAD-500007

No. 2933/H/2002-2003/Acad/iv-5. Date: 31.8.2002.

To
The Secretary/Principal
Mariyam Institute of Computer Sciences,
Chilkur (v) Moinabad Mandal, R.R. District.

Sub: Grant of permission to issue notification for admission into MCA/MBA course during the academic year 2002-2003 – reg.
Ref: Memo No. 7586/EC.1/2002-1 dt. 30.07.2002 issued by the Secretary to Government Higher Education (Ec1) Dept. Govt. of A.P.

Sir/Madam,

In response to the Government Memo cited, permitting Minority institutions to admit Minority candidates into MBA/MCA course for the academic year 2002-2003. You are hereby permitted to admit 60 candidates including NRI/in lieu of NRI in MCA course.

In view of this you are hereby permitted to issue a notification calling applications from the eligible Minority candidates only.

Further as indicated in the Govt. Memo, if sufficient number of Minority candidates are not available, you are directed to report the same along with the list of the admitted minority candidates to the Director, Directorate of Admissions on or before 28.9.2002 who will make further admissions to fill up vacancies, if any, in accordance with the rules in this regard.

All the Management is instructed to strictly adhere to the procedures and guidelines issued through the Govt. Memo while admitting the Minority candidates. Any deviation from these instructions shall be viewed seriously and necessary action would be initiated against the erring managements and also such candidates admitted in violation of the guidelines will not be permitted to appear for the University examinations.

Yours faithfully,

Sd. Registrar.

To
The Director, Directorate of Admission OU."

"MARYAM INSTITUTE OF COMPUTER SCIENCE
Regd. Office 3-6-126, Himayatnagar, Hyderabad-500029.

Dated 23.09.02.

To
The Director,
Directorate of Admissions,
Osmania University,
Hyderabad-7.

Sir,

Sub: Non available of students for MCA – Re.

…

Ours is a newly established M.C.A. college located at Moinabad Mandal. Due to our distant location and being a new college the response is weak this year, and despite several Ads. We are unable to attract 60 students from minority community. Hence as the last date for submitting the admission list, as per OU Notification, i.e. 25th September, we are admitting Non-minority students on first cum first serve basis. However, even from Non Minorities, not even single paise more than the prescribed few is being charged.

Moreover this year due to economic slow down there are very few takers for M.C.A. and our being a new institution we will not be able to run the college if our seats are not filled and at least the Fee is not collected.

We would like to state that to our college has publicly come out with Ads saying that no donation will be charged and admission is only on fees basis. We have even given concessions too several students in fees.

Hence we are requesting you to direct any student approaching your offices for admission on fees basis to our college.

Thanking you,
Yours faithfully,

K.M.Arifuddin/Chairman.

Copy to Secretary, Minority Welfare Dept., Govt. of A.P."

Therefore, the finding recorded by the learned Single Judge that the appellant had violated the instructions issued by the State Government and made itself liable for imposition of penalty cannot be faulted.

No other point has been argued.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

September 13, 2007

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